

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )

Advanced Television Systems and Their )  
Impact Upon the Existing Television )  
Broadcast Service )

MM Docket No. 87-268

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PETITION FOR RECONSIDERATION

Journal Broadcast Group, Inc. (Journal), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the Sixth Report and Order in this proceeding to object to the allotment of digital television (DTV) channel 17 to Journal's Las Vegas, Nevada television station.<sup>1</sup>

Contrary to principles of administrative law that require an agency to explain the basis for its action, the Sixth Report and Order fails to provide its methodology or its rationale for allotting channel 17. This allotment is also unjustified because it imposes significant new costs on Journal and creates serious environmental issues, all of which can be avoided by allotting a VHF channel to this station. Journal thus respectfully requests that the Commission modify its decision by allotting DTV Channel 9 to the station.

Journal is the licensee of Station KTNV-TV, licensed to Las Vegas, which currently operates on NTSC channel 13. KTNV has seven commercial broadcast

<sup>1</sup>Public notice of the Sixth Report and Order appeared in the Federal Register on May 14, 1997. This petition is therefore timely.

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station competitors in the Las Vegas market, three VHF stations (NTSC channels 3, 5, and 8) and four UHF stations (channels 15, 21, 33 and 39). All but one of those stations received DTV allotments that are lower than their current NTSC channels. KTNV, however, was assigned a higher channel. Moreover, unlike all but one of the other stations, which remain in the same band, KTNV's new DTV channel will force it to move to the UHF band.

At the outset, Journal submits that the Commission's adoption of the Table of DTV Allotments and accompanying rules, without also supplying the technical information needed to assess how the Commission made specific allotments or how those allotments could be changed, is arbitrary and capricious agency action. It is well-established that administrative agencies cannot act without also explaining the basis and rationale for their action.<sup>2</sup> The agency must supply sufficient information to explain why it took a particular action. Here, the critical piece of information needed to calculate compliance with the new DTV regime -- Office of Engineering and Technology Bulletin No. 69 -- does not yet even exist. Yet the new rules (e.g., 47 CFR § 73.622) rely on that non-existent Bulletin. It is thus impossible for Journal (or any other licensee) to understand how the allotment for its station was chosen, to test the validity of the Commission's assumptions which

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<sup>2</sup>Numerous court decisions have confirmed the Commission's legal obligation to explain, and not hide, the factual basis for its actions. E.g., City of Brookings Municipal Telephone Co. v. FCC, 822 F.2d 1153 (D.C. Cir. 1987) (reversing FCC order which failed to illuminate the reasons for agency's decision and stating that FCC must set forth a "reasoned determination" as to how it reached its decision); Celcom Communications Corp. v. FCC, 789 F.2d 67 (D.C. Cir. 1986) (FCC must "offer a satisfactory explanation for its conclusion").

underlay it, or to evaluate with any confidence what alternative allotments might exist. This defeats the fundamental purpose of notice and comment rulemaking. The proper course would have been to defer adoption of the Sixth Report and Order until the Bulletin were also released.

The allotment to KTNV in particular disserves the public interest, because it imposes significant costs and burdens on the station which will leave it with less resources to invest in upgrading its facilities, creates unnecessary RF radiation and other potential environmental problems, and imposes a disparate allotment scheme on the Las Vegas market.

Cost estimates which Journal has obtained from antenna and transmitter manufacturers show that purchasing UHF transmitter and antenna equipment, including the need to construct a larger transmitter building to house the UHF transmitter, will cost considerably more than a VHF transmitter and antenna. This added cost is expected to exceed \$1,000,000.

Constructing a DTV facility on channel 17 would also create serious potential environmental problems, due in part to the special situation faced by stations in the Las Vegas market. The mountainous terrain in that area and lack of suitable antenna sites has forced KTNV and numerous other stations to locate close together on Black Mountain. The proximity of many television broadcast, radio broadcast, auxiliary and microwave facilities at the same limited mountain

site has created difficult radiofrequency radiation issues.<sup>3</sup> The Commission is well aware of the RF problems posed by multiple-antenna sites, and has closely monitored the Black Mountain, Nevada, site in particular. The new, stricter RF radiation requirements which the Commission has adopted<sup>4</sup> will make RF radiation compliance on Black Mountain even more complex and expensive.

This situation will be further exacerbated should KTNV be forced to install a UHF DTV antenna, because such antennas will operate at much higher effective radiated power (ERP). Thus, while the VHF DTV allotments for Las Vegas will be licensed from 10 to 25 kw ERP, KTNV will be licensed at 565 kw ERP, nearly twenty times greater. As the attached Engineering Statement warns, "The addition of such a high powered UHF DTV operation by KTNV on Channel 17 to this multiple user site, coupled with the enactment of this new standard, could very well result in the levels of nonionizing radiation at this site exceeding the permitted levels, preventing KTNV from commencing DTV operation with facilities which will replicate its present analog coverage."

There are additional environmental problems that may be caused by the allotment. The UHF transmitter which KTNV would need to install, because it must operate at such a high ERP, must be water cooled. There is no present water source on the mountain which could supply that new transmitter.

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<sup>3</sup>See attached Engineering Statement of Carl E. Smith Consulting Engineers, which details the RF radiation problems at the Black Mountain site.

<sup>4</sup>Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, released August 1, 1996.

Moreover, given desert conditions in the Las Vegas area, use of water is tightly restricted. Journal would be required to apply for multiple permits from state and local land use and water resources agencies to provide a supply of water to its new transmitter, and may not be able to obtain these permits. Even if it can do so, the cost of installing the necessary water supply equipment and operating it will add considerably to the cost of maintaining the transmitter. Moreover, forcing this use of water, in an area of water scarcity, is clearly not in the public interest.

These burdens are particularly inequitable given that most of Journal's competitors will not need to go to the same expense. All but one will be able to remain on lower-power VHF channels or are already operating on UHF channels, and thus do not face the tremendous change in facilities that KTNV will face. Journal recognizes that the Commission cannot achieve perfectly equal treatment of all stations in every market. Where, however, its allotment produces significant disparity in the treatment of competing stations, as is the case here, it should reexamine and modify that allotment if a better option exists.

Journal has identified an alternative DTV channel for KTNV. Channel 9 is not presently used by any station in the Las Vegas market. While it is adjacent to NTSC channel 8, the Commission has assigned numerous DTV channels which are adjacent to NTSC channels. Given that Journal would be moving to Channel 9 while channel 8 would be relocating to channel 7, the time during which 8 and 9 would be simultaneously operating may be brief. To the extent that adjacent channel operation does occur, Journal commits to cooperate with the licensee of

NTSC channel 8 on all frequency coordination issues to ensure both stations provide interference-free service to the market. Because the stations are co-located on Black Mountain, the rules permit adjacent channel operation. See 47 CFR § 73.622(d) and attached Engineering Statement. The allotment of DTV channel 9 to KTNV would achieve a far more balanced allotment plan for the Las Vegas market, avoid the significant costs and burdens to be imposed on KTNV, and avoid the environmental issues that would result from a UHF allotment.

KTNV's analysis of the DTV Table of Allotments identifies only one station which would be short-spaced to KTNV operation on DTV channel 9. This is an unbuilt station licensed to St. George, Utah (assigned the call letters KUSG). The NTSC channel for this unbuilt facility is channel 12, and thus creates no conflict under the spacing rules with a DTV channel 9 allotment to KTNV. However, the St. George station has also been assigned DTV channel 9.

Assignment of channel 9 to KTNV better serves the public interest than pairing it with a long-fallow NTSC channel in St. George.

First, the unbuilt station has sat on its NTSC allotment for more than nine years.<sup>5</sup> Since obtaining its original construction permit in 1988 (File No. BPCT-870812KG), KUSG has filed at least seven requests for extension of time. The most recent construction permit extension, granted in September 1996 (File No. BMPCT-960809KF), expired March 10, 1997. The station has filed yet another

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<sup>5</sup>The date of the original construction permit was May 23, 1988. Television and Cable Factbook, Volume 65 (1997) at A-1382.

request for extension.<sup>6</sup> This request admits that there has been no construction, but only that "certain steps preparatory to the actual construction of the facilities" have been undertaken. In addition, it indicates that construction may be delayed until the Commission completes action on the pending rulemakings on the multiple ownership rules -- an indefinite time. The permittee's continued extension requests reveal no commitment to construct the station by a date certain. Nine years after being assigned, this channel remains unused. Tying up a VHF DTV channel that could solve the problems faced in the Las Vegas market would in this case be arbitrary and capricious.

Second, the St. George station is not in the Las Vegas market, but is part of the Salt Lake City market, and is co-owned with Salt Lake Station KUTV. KUSG's construction permit extension applications make clear that it will simulcast the programming of the Salt Lake station as a "satellite", and that one of the reasons for not constructing KUSG is that the parent has not installed either microwave or fiber optic links in order to provide KUSG with a signal. KUSG will serve the isolated area of St. George, and is the only station licensed to that community. The competitive parity concerns created by KTNV's UHF DTV allotment thus do not exist for KUSG.

Third, because KUSG has never constructed NTSC facilities, it does not force the enormous costs of KTNV and other existing stations, which have invested

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<sup>6</sup>Application for Extension of Broadcast Construction Permit for KUSG-TV, dated February 20, 1997, File No. BMPCT-9702224KE. FCC records indicate this latest extension request remains pending.

in NTSC facilities and must now construct entirely new facilities on a different channel. It is thus less significant which particular DTV channel KUSG is assigned. Whatever that channel is, KUSG can proceed to construct on it and avoid the need to construct duplicative facilities. By contrast, forcing KTNV to move up to channel 17 would impose significant burdens on Journal alone.

Moreover, there are ample options for a different allotment for KUSG. The attached Engineering Statement states that "there are at least 21 channels, including channel 22, in the proposed "core" spectrum (Channels 7-51) which can be utilized in St. George for DTV operation by KUSG while fully complying with the spacing requirements of Section 73.623(d)(1) of the FCC Rules." Where, as here, there is an alternative arrangement which complies with the Commission's DTV rules and policies, which will allow numerous problems posed by the original arrangement to be solved, it would be arbitrary and capricious for the Commission not to adopt that alternative.

For the above reasons, the Commission's Sixth Report and Order should be modified to specify a DTV allotment for KTNV, Las Vegas, Nevada, of channel 9,

and a DTV allotment for KUSG, St. George, Utah, of channel 22 or an alternative DTV channel.

Respectfully submitted,

JOURNAL BROADCAST GROUP, INC.

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Dated: June 13, 1997

ENGINEERING STATEMENT IN  
SUPPORT OF PETITION FOR  
RECONSIDERATION

MM DOCKET 87-268

Journal Broadcast Group, Inc.  
Las Vegas, NV

June 12, 1997

Prepared for: Mr. Randy Price  
Journal Broadcast Group, Inc.  
720 East Capitol Drive  
Milwaukee, WI 53201

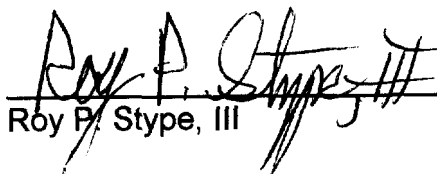
**CARL E. SMITH CONSULTING ENGINEERS**

ENGINEERING AFFIDAVIT

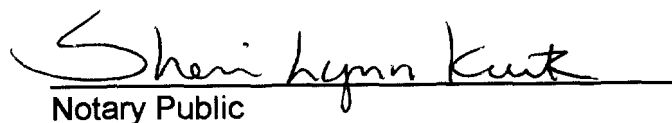
State of Ohio                                 )  
  ) ss:  
County of Summit                         )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Journal Broadcast Group, Inc., to prepare the attached "Engineering Statement In Support Of Petition For Reconsideration - MM Docket 87-268."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on **June 12, 1997**.

  
\_\_\_\_\_  
Notary Public

/SEAL/

SHERI LYNN KURTZ, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires June 14, 2000

## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Journal Broadcast Group, Inc., licensee of KTNV(TV) - Las Vegas, Nevada. It supports a petition for reconsideration of the Sixth Report and Order in MM Docket 87-268.

KTNV presently operates as an analog TV station on Channel 13 with an effective radiated power of 316 kilowatts at 610 meters above average terrain. The above referenced Sixth Report and Order allotted Channel 17 to Las Vegas for DTV use, paired with Channel 13 for use by KTNV. In order to replicate KTNV's present analog service area, the DTV allotment on Channel 17 was assigned an effective radiated power of 565.2 kilowatts at 610 meters above average terrain from the present KTNV transmitter site on Black Mountain.

As the FCC is well aware, the Black Mountain antenna farm is one of the most critical, unforgiving locations in the entire country with regard to maintaining compliance with the requirements outlined in ANSI Standard C95.1-1982 regarding human exposure to nonionizing radiation. This situation could be further aggravated by the new standard for exposure to nonionizing radiation which was recently adopted by the FCC and is presently scheduled to become effective on September 1, 1997. The addition of such a high powered UHF DTV operation by KTNV on Channel 17 to this multiple user site, coupled with the enactment of this new standard, could very well result in the levels of nonionizing radiation at this site exceeding the permitted levels, preventing KTNV from commencing DTV operation with facilities which will replicate its present analog coverage. The necessary effective radiated power for DTV operation on a high band VHF channel (7-13) to replicate KTNV's present analog TV coverage on Channel 13 is approximately 25 kilowatts, or approximately 4% of that which would be

required on Channel 17. Thus, DTV operation by KTNV on one of these high band VHF channels would significantly reduce the potential for nonionizing radiation problems on this site as KTNV and other stations implement DTV operation.

DTV operation on Channel 9 from the present KTNV transmitter site would comply with the spacing requirements for new DTV allotments outlined in Section 73.623(d)(1) of the FCC Rules, except with regard to a DTV allotment on Channel 9 in St. George, Utah, made in this proceeding and paired with the unbuilt analog TV facilities authorized by the long outstanding construction permit for KUSG(TV) - Saint George, Utah. It has been determined, however, that there are at least 21 channels, including Channel 22, in the proposed "core" spectrum (Channels 7-51) which can be utilized in Saint George for DTV operation by KUSG while fully complying with the spacing requirements of Section 73.623(d)(1) of the FCC Rules. Additional channels would almost certainly be available for DTV use by KUSG under the less restrictive interference criteria outlined in Section 73.623(c) of the FCC Rules for modifications to DTV allotments contained in the initial Table of DTV Allotments.

The KTNV site lies 0.04 kilometers from the authorized transmitter site for the analog TV operation of KLAS-TV - Las Vegas, Nevada, on Channel 8 and 7.61 kilometers from the authorized transmitter site for the analog TV operation of KLVX - Las Vegas, Nevada, on Channel 10. Both of these separations comply with the requirements of Section 73.623(d)(1) of the FCC Rules, which permits separations between Analog TV and DTV stations operating on first adjacent channels in Zone II of either less than 17.7 kilometers or greater than 146.4 kilometers. KTNV recognizes that there is a potential for interference to a nearby analog TV station operating on a lower first adjacent channel unless the proper steps are taken to maintain a precise frequency offset between

the two stations' carriers. In order to insure that no such interference problems occur, KTNV will work closely with the KLAS-TV to insure compliance with the frequency tolerance requirements outlined in Section 73.622(g) of the FCC Rules.

Based upon the above information, serious environmental problems potentially associated with DTV operation by KTNV on Channel 17 with an effective radiated power in excess of 500 kilowatts can be avoided by modifying the DTV Table of Allotments adopted in this proceeding to specify DTV operation for KTNV on Channel 9. In order to accommodate this modification, it appears that it will also be necessary to modify this table to substitute another channel, such as Channel 22, for the DTV allotment on Channel 9 in Saint George, Utah, for the unbuilt facilities of KUSG.